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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,600	12/29/2003	Robert A. Jacobs	5038-353	8674
20575	7590	08/17/2004	EXAMINER	
MARGER JOHNSON & MCCOLLOM PC 1030 SW MORRISON STREET PORTLAND, OR 97205			ANDERSON, MATTHEW D	
			ART UNIT	PAPER NUMBER
			2186	

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/748,600	Applicant(s) JACOBS, ROBERT A.	
	Examiner Matthew D. Anderson	Art Unit 2186	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 17 is/are allowed.
- 6) ☒ Claim(s) 16 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 18-25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/31/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In response to the amendment filed 12/31/03: claims 16-25 have been canceled.

Claim Objections

2. Claims 18-19 and 22-25 are objected to because of the following informalities: based upon the language of the preamble of each claim (memory/system), it appears that claims 18-19 should depend upon independent claim 16, while claims 22-25 should depend upon independent claim 17. For examination purposes, the claims will be treated as such. Appropriate correction is required.
3. Claims 18-21 are objected to because of the following informalities: the preamble of each claim should be changed from "The memory" to "The flash memory" to avoid any possible antecedent confusion. Appropriate correction is required.
4. Claims 22-25 are objected to because of the following informalities: the preamble of each claim should be changed from "The system" to "The memory system" to avoid any possible antecedent confusion. Appropriate correction is required.

Double Patenting

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467,

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114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 16 and 18-21 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-5 of prior U.S. Patent No. 6,684,288. This is a double patenting rejection.

Allowable Subject Matter

7. Claim 17 is allowed.

8. Claims 22-25 would be allowable if rewritten to overcome the objections set forth in this Office Action.

9. The following is an examiner's statement of reasons for allowance: the prior art does not teach or suggest the combination of claim elements specifically including an erase and write table accessible by the processor store erase and write time data for the data blocks, wherein the erase and write time data is defined as the duration or amount of time it will take to perform the data storage operation.

10. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Anderson whose telephone number is (703) 306-5931. The examiner can normally be reached on Monday-Friday, 2nd Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Kim can be reached on (703) 305-3821. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Matthew D. Anderson
August 11, 2004

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